

**§ 426.565**

additional evidence) than what the Board evaluated.

**§ 426.565 Board's role in making an LCD or NCD review record available.**

Upon a request from a Federal Court, the Board must provide to the Federal Court a copy of the Board's LCD or NCD review record (as described in § 426.587).

**§ 426.566 Board decision.**

A decision by the Board constitutes a final agency action and is subject to judicial review. CMS may not appeal a Board decision.

**§ 426.587 Record for appeal of a Board NCD decision.**

(a) *Elements of the Board's NCD review record furnished to the public.* Except as provided in paragraph (b) of this section, the Board's NCD review record consists of any document or material

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that the Board compiled or considered during an NCD review, including, but not limited to, the following:

- (1) The NCD complaint.
- (2) The NCD and NCD record.
- (3) The supplemental NCD record, if applicable.
- (4) Transcripts of record.
- (5) Any other evidence relevant gathered under § 426.540.
- (6) The Board's decision.
- (b) *Documents excluded from the NCD review record furnished to the court.* The NCD review record furnished to the court maintains the seal on privileged information or proprietary data that is maintained under seal by the Board. In the event a court seeks to obtain or requires disclosure of any documents excluded from the NCD record as privileged information or proprietary data, CMS or the Department seeks to have a protective order issued for those documents, as appropriate.